Office Supreme Court, U.S.
FILED
NOV 27 1961
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

No. 486

OCTOBER TERM, 1961

BILL HERRON,

Appellant,

v.

PORTLAND STAGES INC., an Oregon corporation; GEORGE B. FOURIER and WILLIAM B. ROBINSON,

Appellees.

BRIEF OPPOSING MOTION TO DISMISS

On Appeal from the Supreme Court of the State of Oregon.

Appearing herein
In propria persona:
BILL HERRON,
c/o Western Oil Co.,
10443 N. E. Klickitat,
Portland 20, Oregon,
Appellant.

VERGEER & SAMUELS,
CHARLES S. CROOKHAM,
1027 E. Burnside
Portland 14, Oregon,
KENNETH E. ROBERTS,
1091 Board of Trade Building,
Portland, Oregon,
Attorneys for Appellees.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 11-61

INDEX

	Page
Opposing Statement	1
Argument	4
Conclusions	7
Certificate of Service	8
Appendix A—Statutes	10
Appendix B—Statutes	10
Appendix C—Statutes	11
Exhibit A—Returned Mail Envelope	12
Exhibit B—Returned Mail Envelope	12
Exhibit C—Returned Mail Envelope	13
Exhibit D—Returned Mail Envelope	13

In the Supreme Court
of the United States

No. 486

OCTOBER TERM, 1961

BILL HERRON,

Appellant,

v.

PORTLAND STAGES INC., an Oregon corporation; GEORGE B. FOURIER and WILLIAM B. ROBINSON,

Appellees.

BRIEF
OPPOSING
MOTION TO DISMISS

On Appeal from the Supreme Court of the State of Oregon.

OPPOSING STATEMENT

The appellant pursuant to Rules 16-3, 33, 39 and 40 of this Court, answers to appellee's move seeking to have this case dismissed.

Appellant succinctly reiterates with amplifications that the Circuit Court of Multnomah County, State of Oregon, grossly erred and committed an abuse of court discretion in denying appellant's guaranteed state and

federal constitutional rights and privileges to a jury trial, wherein to present grievances concerning a vicious, wanton and premeditated physical assault upon appellant by both appellees, inflicting permanent injuries to appellant's spine and kidneys resulting in further consequential damage to other vital organs. To this date appellant has had two surgical operations performed by specialists in attempts to save the most seriously injured kidney and alleviate the necessity of its removal. Notwithstanding the facts of this case being amply set forth in appellant's Complaint, thus known to the lower court of first instance, Case No. 259-172, Judge Schwab arbitrarily dismissed this case without it ever having as much as a preliminary hearing.

Appellant is entitled to have his day in court and present his grievances before his own peersmen, and further set forth the positive evidence he has to show the biased, partial and fixed attitude of said judge of the lower court; who was recently appointed to fill a vacancy in the Circuit Court of Multnomah County, State of Oregon. Further positive evidence appellant has to show is that a very close personal association between Judge Schwab and appellee Fourier did exist, and such is certainly pertinent and relative to the issues of this cause of action.

Appellant has evidence to show that at the time this unprovoked physical assault was deliberately perpetrated upon him, said judge was then serving as a member of the school board and in such a position he arranged a "fixed proposition" whereby appellee Fourier

had constant assurance he would receive the contracts issued each year for furnishing the public schools with buses and drivers for students' transportation. Thus it becomes most obvious why Judge Schwab arbitrarily dismissed appellant's Complaint; why said judge "arranged" that appellant's case be assigned to him, as he attempted to do in two other pending cases appellant has in the Circuit Court.

It is well established among attorneys,—and very well known to judges of the Multnomah County Courts, —that when attorneys are fully conscious their clients just do not have any justifiable defense for a wanton physical assault action such as this case of appellant's, they then resort to constant senseless moves as repeated strike motions and dismissal actions as counsels for appellee have done in this case. Appellant contends just such shyster tactics are tantamount to a confession of guilt. The certified records transmitted by the clerk of the Supreme Court of Oregon to this Court will show that counsel for appellees falsely swore that service of the Motion to Dismiss in that court, had been perfected upon appellant. Appellant has positive evidence to show that at the time said Motion to Dismiss was filed that counsel for appellees had full knowledge that appellant Herron was still constantly commuting both intra- and interstate in connection with his business and legal affairs and at that particular time he was not even in the State of Oregon. Appellant knew absolutely nothing whatsoever of the fact that such a Motion of Dismissal had ever been filed in the Oregon Supreme Court until he received a copy letter from F. M. Sercombe, clerk

of the Supreme Court which was addressed to counsel Charles Crookham, advising him that the Justices of the Supreme Court of Oregon had granted respondent's Motion to Dismiss this case; by which time it was then too late to make application for a rehearing on the matter concerning such fraudulent methods of service. A certified copy of said Dismissal Order appear in Appellant's Jurisdictional Statement, page 14, Appendix B.

ARGUMENT

Positive proof that all opposing counsel have intentionally misquoted to all three courts in this case is fully sustained by appellant's Exhibits A, B, C and D; all four of the opposing counsel mailing envelopes which contained service copies of pleadings in this case; all clearly reveal they were sent by regular four cent postal mailing service; no Certified Mail Registry Number appearing whatsoever.

These exhibits further prove what extensive outright crooked means of blasphemy and brazen blarney all opposing counsel have resorted to in their vain attempt to have it appear to all the courts they were a group of exemplary juridical saints and apostles. Also it is proven all their elaborate means of having photostat copies made of certified mail envelopes which were returned by reason of appellant not being in Portland at that time to sign for their delivery, was thus only a subterfuge; as is also counsel Crookham's affidavit.

All opposing counsel have proven themselves outright stupid impostors by their very own assertions and

citations; particularly O.R.S. 19.026. Beginning with the last paragraph on page 4 of their Motion to Dismiss, carrying on through to page 5 and including their citation of O.R.S. 19.026—then referring to appellant's citations of O.R.S. 19.005, 19.023 and 19.038 under Appendices A, B and C—then to the certified copy of the Docket Entries prepared by the clerk of the Circuit Court, as shown in appellant's Jurisdictional Statement, Appendix A on page 12—from all it is shown that the Order signed by Judge Schwab was not filed and entered until May 15, 1961. Thus by the citations submitted by appellant it is very clearly revealed that the Oregon Statutes specifically designate that the 30-day period allowed to file and perfect the full proceedings of a Notice of Appeal, is figured, "not" from the day a judge signs an order, but from the date said order is entered upon the docket sheet of the county court clerk.

Appellant made such citations very clear on pages 1, 2 and 3 in his Jurisdictional Statement dated October 6, 1961; yet at this date all of the opposing counsel still continue to intentionally misrepresent and misquote to the Supreme Court in like manner as they did in the Circuit and Supreme Courts of Oregon.

Further misrepresentation by opposing counsel to the courts, appellant herein cites, to-wit: on page 9 last paragraph of appellant's said Jurisdictional Statement, appellant alleged opposing counsel had purposely changed their method of mailing service upon him from regular mail service to certified mail service, thus caus-

ing great delay in appellant receiving his service, which was exactly appellees' aim, to facilitate their filing actions calling for appellant's appearance at a time they very definitely knew he was out of town, and which actually did result in a default being taken, as stated in detail on page 9.

It is very pertinent to note that since the very beginning of this case counsel Vergeer & Samuels had counsel Frederic P. Roehr do their bidding of intentional misquotes to the lower court; he was supplanted by counsel Charles S. Crookham to likewise perform in the Oregon Supreme Court; now with this filing of appellees' Motion to Dismiss, counsel Kenneth E. Roberts continues along the same line of legal debauchery. All in direct violation of Rule 16 of the Oregon State Bar; which very explicitly states no counsel shall intentionally misquote facts, law citations, statutes or pleadings to any court for the purpose of misleading a court that favor may be gained for their causes.

Counsel's citations and pleaded lamentations concerning that the appeal of this case to the Supreme Court of the United States should have been via Petition for Writ of Certiorari is erroneous, inasmuch as no trial was ever had; thus the facts, merits and general issues of this case were never given an opportunity to be heard, therefore, nothing in generalities to review. The explicit single purpose of appellant's appeal to the Supreme Court of the United States is to have the original jurisdiction of this case reinstated to the court of first instance; that it be remanded back to its original

status and jurisdiction and set for an immediate trial by jury.

As to counsel's assertions appellant had let unnecessary time elapse in answering to pleadings is also entirely erroneous. The real and whole truth being appellees do not ever want this most provable physical assault and permanent injury case to ever come to trial. The very nature of their pleadings veritably vociferate with such deduction. Furthermore they have always had the ever present privilege and court rule available to them of filing a praecipe calling for a setting of a fixed date for a trial; but which the records show they never did do, but most readily could have done.

CONCLUSIONS

For good causes and showing herein cited that appellant has not ever had his day in court, together with the showing of the proven incidents of misrepresentation by appellees to all of the court as herein related, appellant therefore respectfully requests of this Court and prays that this case be reinstated, remanded back to the court of first instance, giving appellant his constitutional right to a trial by jury.

Dated this 22nd day of November, 1961 at Portland, Multnomah County, State of Oregon.

Respectfully submitted,

BILL HERRON, Appellant,
In propria persona.

CERTIFICATE OF SERVICE

COUNTY OF MULTNOMAH)
) SS. AFFIDAVIT
STATE OF OREGON)

I, BILL HERRON, being first duly sworn, depose and say, that I am the appellant acting as my own attorney appearing in propria persona, do hereby Certify, that in compliance with Rule 33 of Revised Rules of the Supreme Court of the United States, I have forwarded via Certified Mail with return receipt requested, service copies of the foregoing Brief Opposing Motion to Dismiss, to counsel for appellees at their respective addresses as shown on the front cover page of this brief.

That they were placed in a sealed envelope properly addressed and deposited at the main branch Portland, Oregon, Post Office at S. W. Glisan and Broadway on this date.

That inasmuch as I am not represented by counsel a member of the Bar of the of the Supreme Court of the United States, I therefore will furnish proof of such service having been made by forwarding to the clerk of the Supreme Court, the certified mail receipt together with its return receipt card immediately upon receipt of same from the recipients.

Dated this day of November, 1961 at Portland, Oregon.

Appellant in propria persona.

BILL HERRON
c/o Western Oil Co.
10443 N. E. Klickitat
Portland 20, Oregon
AL 4-2867

Dated this 22nd day of November, 1961 at Portland, of November, 1961, at Portland, Multnomah County, Oregon.

Notary Public for Oregon.
My Commission Expires
February 5, 1962.

APPENDIX A

OREGON REVISED STATUTE 19.005

Definitions for O.R.S. 19.023 to 19.190

Appellant refers to sub-section (6) only, to-wit: "Clerk" means the county clerk of, and such ex officio clerk of the trial court for, the county in which the judgment or appealable order is filed and entered, or either. (1959, c. 558, § 2.)

Note: O.R.S. 19.005 takes effect on January 1, 1960.

APPENDIX B

OREGON REVISED STATUTE 19.030. Amended by 1959, c. 558, § 3; renumbered O.R.S. 19.023

How appeal taken.

(1) An appeal to the Supreme Court shall be taken in the manner prescribed in O.R.S. 19.023 to 19.190.

(2) A party to a judgment desiring to appeal therefrom, or some specified part thereof, shall cause a notice, signed by himself or his attorney, to be served on such adverse party or parties as have appeared in the action, suit or proceeding and file the original, with proof of service indorsed thereon or affixed thereto, with the clerk.

(3) The notice shall be in the form prescribed in O.R.S. 19.029, shall be filed within the time prescribed in O.R.S. 19.026, and shall be accompanied by the designation required by O.R.S. 19.074. (Formerly 19.030.)

Note: The 1959 amendment to O.R.S. 19.030 took effect on January 1, 1960. Until January 1, 1960, O.R.S. 19.030 as compiled in the 1955 Replacement Part will remain in effect.

APPENDIX C

OREGON REVISED STATUTE 19.038

Filing of undertaking on appeal; exception to sureties.

(1) Except as provided in O.R.S. 19.045, within 10 days after the filing of the notice of the appeal, the appellant shall serve on the adverse party or his attorney an undertaking as provided in O.R.S. 19.040, and within such 10 days shall file with the clerk the original undertaking, with proof of service indorsed thereon.

(2) Within 5 days after the service of the undertaking, the adverse party or his attorney may except to the sufficiency of the sureties in the undertaking, or he shall be deemed to have waived his right thereto.

(3) The qualifications of sureties in the undertaking on appeal shall be the same as in bail or arrest, and, if excepted to, they shall justify in like manner. (1959, c. 558, § 8.)

Note: O.R.S. 19.038 takes effect on January 1, 1960.

Exhibit A

VERGEER & SAMUELS
ATTORNEYS AT LAW
1027 E. BURNSIDE
PORTLAND 14, OREGON

Mr. Bill Herron
c/o E. J. Arnold
10443 N.E. Klickitat
Portland 20, Oregon

Exhibit B

VERGEER & SAMUELS
ATTORNEYS AT LAW
1027 E. BURNSIDE
PORTLAND 14, OREGON

Mr. Bill Herron
c/o E. J. Arnold
10443 N.E. Klickitat
Portland 20, Oregon

VERGEER & SAMUELS
ATTORNEYS AT LAW
1027 E. BURNSIDE
PORTLAND 14, OREGON

VERGEER & SAMUELS
ATTORNEYS AT LAW
1027 E. BURNSIDE
PORTLAND 14, OREGON

Exhibit C

Mr. Bill Herron
c/o E. J. Arnold
10443 N. E. Klickitat
Portland 20, Oregon

Exhibit D.

Mr. Bill Herron
c/o E. J. Arnold
10443 N. E. Klickitat
Portland 20, Oregon